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NO. 86-_____

Supreme Court, U.S.
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IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1986

JUDY WADDELL, APPELLANT

VS

THE PEOPLE OF THE STATE OF MICHIGAN, APPELLEE

On Appeal From The Circuit Court For The
County of Berrien, State of Michigan

MOTION TO DISMISS
BRIEF IN SUPPORT

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MOTION TO DISMISS

NOW COME the People of the State of Michigan, the Plaintiff-Appellee, by PAUL L. MALONEY, Prosecuting Attorney for Berrien County, Michigan, to file a Motion to Dismiss this appeal pursuant to Rule 16.1(b) of the Rules of the Supreme Court of the United States, and states:

1. That this is an appeal from a state court's ruling in the State of Michigan.

2. That this appeal does not present a substantial federal question.

3. That the Plaintiff-Appellee incorporates by reference the attached Brief in Support of Motion to Dismiss.

DATED: May 29, 1987

Paul L. Maloney

PAUL L. MALONEY (P25194)
Prosecuting Attorney
Berrien County, MI

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QUESTION PRESENTED

Does the jurisdictional statement filed by the Defendant-Appellant present a substantial federal question for review in this Court?

STATEMENT OF THE CASE

This case involves a prosecution for violation of the Michigan Compulsory School Attendance Law, MCLA 340.731; MSA 15.3731 (now MCLA 380.1516; MSA 15.41561). That law requires that every parent or guardian having custody or control of any child between the ages of 6 and 16 years of age must send the child to school, subject to certain exceptions not applicable here. Defendant was charged with being the parent of a 7 year old boy, BRETT WADDELL, and failing to send that child to school, contrary to the statute cited above.

The trial was held on September 30, 1975, and proofs established that in September of 1974, it came to the attention of the Berrien Springs School District Superintendent that four children of school age within the district were not being sent to school. One of these children was Defendant's son, BRETT WADDELL. The Superintendent sent to the Defendant a letter on September 23, 1974, asking her to contact him concerning the situation, and she later called him and admitted that Brett was 7 years old, but asked for an opportunity to discuss the matter with her minister.

After a month had passed, the school attendance officer, who was also a member of the Defendant's faith (Seventh Day Adventist) sent a certified notice of non-attendance to the Defendant, which came back refused. The attendance officer then went to the Waddell home on November 26, 1974, to visit Mrs. Waddell and personally deliver the notice of non-attendance.

The Defendant told the attendance officer at that time that she could not send the child to school for religious reasons. The Defendant stated that she believed that nature should be the only class room and parents the only teachers until a child reached the age of reason, and indicated that she wanted to keep the boy at home until that age. She did not specify what the age of reason was, but the attendance officer took this to mean anywhere from age 7 to 9.

Both the school superintendent and the school attendance officer felt that the Defendant's belief was sincere, but also felt that the law should be enforced. Both testified that the Defendant made no requests for any special accommodations nor was one considered. The attendance officer testified that although there had been six or eight other situations over the years involving adventist parents who had not sent their children to school, all prior cases had complied with the

Michigan Compulsory Education Law after being contacted by him.

At the conclusion of the trial phase, the Court found the trial proofs sufficient to support a conviction and proceeded to take testimony on the motion to dismiss. That testimony took 17 days, spread over a period of time from September 30, 1975 to October 29, 1976, and filled 17 volumes of transcript. Following the testimony at the trial and on the motion, the Court took this case under advisement. Its written decision was rendered denying Defendant's motion to dismiss and finding Defendant guilty as charged on September 1, 1983. On March 20, 1984, Defendant was sentenced by the Court to pay a $50.00 fine and $1,000.00 in costs. Defendant appealed that conviction and sentence to the Circuit Court, which upheld the conviction, but reversed the assessment of $1,000.00 in costs.

The Defendant filed an application for leave to appeal in the Michigan Court of Appeals, which was denied on August 18, 1986. The Defendant's application for leave to appeal to the Michigan Supreme Court was denied on February 10, 1987. This case has been pending since charges were authorized on January 14, 1975 - more than 12 years since commencement. As Circuit Judge Chester J. Byrns stated in his opinion on appeal:

> "The Supreme Court of the United States and of Michigan, and the public itself, have been vocal, especially in recent years, in their criticism of the trial bench and bar for delay in prompt disposition of litigation, particularly, as here, of criminal cases.
>
> This case, unfortunately, adds fuel to the fires of such criticism and justification for it. The case is finally to be disposed by this opinion, 11 full years after it commenced. The 7 year old boy is now 18; is a young man eligible to vote; and the Court is pleased to note, from the oral arguments, attending college."

The only exhibit introduced during the trial phase was Brett Waddell's birth certificate, which established Brett's date of birth as August 7, 1967. Brett is now almost 20 years old.

BRIEF IN SUPPORT OF MOTION TO DISMISS

As presented in the section entitled "Statement of the Case", the Defendant-Appellant is contending that the Michigan Compulsory Education Statute violates the Defendant's free exercise of religion. The grounds stated in that jurisdictional statement do not present a substantial federal question.

This Court, in **Wisconsin v Yoder, 406 US 205, 32 L Ed 2d 15, 92 S Ct 1526 (1972)**, has previously set forth the standards for interpretation of States Compulsory Education Statutes, and further review of this subject is not necessary in this case.

This Court has been presented with similar issues in the past, and has ruled that this question is not a substantial federal question which needs to be reviewed by the United States Supreme Court. **State v Rivinius, 328 NW2d 220 (ND 1982), cert den 460 US 1070 (1983); Nebraska v Faith Baptist Church, 301 NW2d 571 (1981), app dis 454 US 803 (1981); Kentucky State Board of Education v Rudasill, 589 SW2d 877, cert den 446 US 938 (1980).**

In **Brown v Board of Education, 347 US 483, 98 L Ed 2d 873, 74 S Ct 686 (1954)**, this Court has indicated that:

> "Today, education is perhaps the most important function of the state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognization of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child cultural values, and preparing him for later professional training, and in helping him to adjust normally to his environment." L Ed 2d at 880.

Since the lower courts of the State of Michigan decided this case based upon the factors of **Wisconsin** v **Yoder**, **supra**, this case does not present a substantial federal question for consideration by this Court.

CONCLUSION

For the reasons stated in this Brief in Support of Motion to Dismiss, this Court should grant the Plaintiff-Appellee's Motion to Dismiss, pursuant to Rule 16.1(b) of the Rules of the United States Supreme Court, since the Defendant-Appellant has not presented a substantial federal question to be considered by this Court.

DATED: May 29, 1987

PAUL L. MALONEY (P25194)
Prosecuting Attorney
Berrien County, MI

/ks

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PROOF OF SERVICE

KATHLEEN A. SCIENSKI, being first duly sworn, deposes and states that on the 29th day of May, 1987, she served the original and 40 copies of Respondent's Appearance, Brief, and Proof of Service in the above referenced matter by depositing in a government mail receptacle in St. Joseph, Michigan, enclosed in a sealed envelope plainly addresed to: Clerk, Supreme Court of the United States, Washington, D.C. 20543; and three (3) copies of the same to:

Mr. Lee Boothby, Attorney at Law, P.O. Box 268, Berrien Springs, MI 49103; and three (3) copies of the same also to: The Honorable Frank J. Kelly, Attorney General, State of Michigan, 525 W. Ottawa Street, Lansing, MI 48913; with first class postage thereon fully prepaid.

Kathleen A. Scienski

KATHLEEN A. SCIENSKI

Subscribed and sworn to before me, a Notary Public in and for the County of Berrien, this 29th day of May, 1987.

Lynn A. Lange

LYNN A. LANGE, Notary Public
Berrien County, Michigan
My Commission Expires: 3/14/88